



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 8, 1991

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County Courthouse  
P. O. Box 1748  
Austin, Texas 78767

OR91-480

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13691.

The Travis County Attorney received an open records request for video tape recordings of sobriety tests conducted on two named individuals. You state that the individuals have previously viewed the videotapes of their own sobriety tests and that litigation is no longer pending with respect to the tests; you inquire, however, whether the videotapes must be withheld from the public pursuant to section 3(a)(19) or common-law privacy as it is incorporated into section 3(a)(1).

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," including the common-law right to privacy. The common-law privacy aspect of section 3(a)(1) protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has previously held that any information revealing acute alcohol intoxication or emotional/mental distress ordinarily comes under the protection of common-law privacy. *See, e.g.*, Open Records Decision No. 370 (1983).

With regard to the issue of alcohol intoxication, after reviewing the information at issue we do not believe that the information contained in either videotape reveals acute alcohol intoxication. Portions of tape number 91-189 do, however, reveal the defendant's extreme emotional distress during the sobriety tests; these portions of the tape reveal highly intimate or embarrassing information, are not of legitimate public interest, and thus may be withheld pursuant to section 3(a)(1). The other requested videotape, numbered 91-150, does not reveal extreme emotional distress on the part of the defendant and therefore does not consist of "highly intimate or embarrassing" information protected by common-law privacy.

Section 3(a)(19) of the Open Records Act protects:

photographs that depict a peace officer as defined by Article 2.12, Code of Criminal Procedure . . . the release of which would endanger the life or physical safety of the officer unless:

(A) the officer is under indictment or charged with an offense by information; or

(B) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(C) *the photograph is introduced as evidence in a judicial proceeding.*

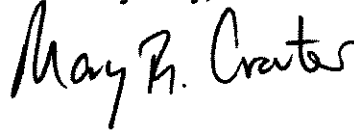
V.T.C.S. art. 6252-17a, § 3(a)(19) (emphasis added).

The prohibition against the release of peace officers' photographs, or in this instance electronically recorded visual images, is mandatory unless the officer gives his or her written consent to the release or if one unless the listed exceptions apply. See Open Records Decision No. 502 (1988). Because you state that videotape number 91-150 was introduced as evidence during a criminal trial, section 3(a)(19) will not act to protect any portion of that videotape from public disclosure. Because no portion of this video tape comes under the protection of either section 3(a)(19) or section 3(a)(1), tape number 91-150 must be released in its entirety.

On the other hand, videotape number 91-189 was never entered into evidence during a judicial proceeding and was revealed to the criminal defendant only during an informal, "open" discovery process, after which the defendant entered a plea bargain. Consequently, those portions of videotape number 91-189 that contain the depictions of a peace officer must be withheld pursuant to section 3(a)(19) absent the officer's written consent to release. Because the only portions of this tape that do not contain a peace officer's image are those that are otherwise protected from public disclosure by section 3(a)(1), tape number 91-189 must be withheld in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-480.

Yours very truly,

A handwritten signature in black ink that reads "Mary R. Crouter". The signature is written in a cursive, flowing style.

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/RWP/lcd

Ref.: ID# 13691

Enclosures: Submitted videotapes (2)